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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

February 18, 2022

IIS Contracting Division

Exhibit

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Mr. Joseph K. Posillico
Managing Member
Posillico Civil, Inc./Coastal Environmental Group Inc. A Joint Venture d/b/a
Southern Border Constructors
1750 New Hwy
Farmingdale, NY 11735-1562

Dear Mr. Joseph K. Posillico,

In accordance with FAR 49.102(d) I am rescinding the total termination for convenience dated October 8, 2021. I am reinstating the portions of the contract previously included in the lift of suspension dated August 16, 2021.

You are hereby notified that contract number W9126G19D0020, task order number W9126G19F6147 RGV-08 Design-Build Construction Project in Starr Counties, Texas, is partially terminated for the convenience of the Government under Federal Acquisition Regulation (FAR) clause 52.249-2, "Termination for Convenience of the Government (Alt I)", present in the contract. This termination is made in accordance with the Presidential Proclamation 10142 dated January 20, 2021 and direction from the US Department of Homeland Security (DHS) dated September 17, 2021 to cancel this contract. The termination is effective immediately upon delivery of this Notice.

All work on this contract not specifically included in the partial lift of suspension dated August 16, 2021 is hereby terminated. You are directed to continue completing all the work included in the partial lift of suspension dated August 16, 2021.

You are to immediately advise the undersigned Contracting Officer in writing of any special circumstances precluding the stoppage of work included in the partial termination.

I will contact you to schedule a preliminary conference to discuss the partial termination in accordance with FAR 49.105(c).

Concerning the terminated portion of the contract and in furtherance of your duties under FAR 49.104 and 52.249-2, you shall take the following actions:

- (1) With the exception of the tasks and work necessary to affect this partial termination, and the activities described in the partial lifting of suspension letter

dated August 16, 2021, you are hereby directed to stop all work, make no further shipments, place no further orders relating to the contract, and terminate all subcontracts related to the terminated portion of the prime contract.

(2) Keep adequate records of your compliance with this directive, showing the following:

- a) Date you received this Notice of Partial Termination,
- b) Effective date of this termination, and
- c) Extent of completion of performance on the effective date.

(3) Furnish notice of termination to each immediate subcontractor and supplier that will be affected by this partial termination. In such notice —

- a) Specify your Government contract number W9126G19D0020, and task order number W9126G19F6147;
- b) State that the contract has been partially terminated;
- c) Provide instructions to stop all work, make no further shipments, place no further orders, and terminate all subcontracts under the contract for terminated portions of the contract;
- d) Provide instructions to submit any terminations settlement proposal promptly; and
- e) Request that similar notices and instructions be given to its immediate subcontractors, as applicable.

(4) If required or otherwise practicable, urge subcontractors to take similar actions to those described in paragraphs (1-13) of this Notice.

(5) *Termination Settlement Proposal (TSP)*. Submit a TSP on Standard Form (SF) 1436 (total cost basis) (encl 1) in accordance with the terms of FAR 49.206-2(b)(3) and FAR 52.249-2 ALT I, Termination for Convenience of the Government, to include all costs incurred under the contract (pre and post termination), after the non-terminated portion of the contract has been completed. Promptly, but not later than one year from the effective date of this termination (unless extended in writing by the TCO upon written request of the Contractor within this one-year period) send the TSP to CESWF-IIS@usace.army.mil. Please refer to the adequacy tool checklist (encl 2) in the preparation of your TSP to ensure sufficient detail to allow evaluation by the Government. Attach an SF1439 (encl 3), Schedule of Accounting Information, if applicable. To facilitate settlement of the TSP, please establish a separate job order or code to which settlement expenses can be charged on a direct basis (FAR 31.205-42(g)).

(6) *Settlements with subcontractors.* You remain liable to your subcontractors and suppliers for proposals arising because of the termination of their subcontracts or orders. For purposes of reimbursement by the Government, settlements will be governed by the provisions of FAR Part 49. Subcontractor TSPs must be included with your TSP. In accordance with FAR 49.605, you may request the TCO, in writing (via email), for approval to settle subcontractor TSPs on a total cost basis (Line 12 of the SF1436) of less than \$100,000 only. You are encouraged to use the DFARS PGI 249.110 format, *Table 49-1, Settlement Memorandum Fixed-Price Contracts*, as appropriately modified, for all subcontract settlements submitted for review and approval.

(7) *Requests for Equitable Adjustment (REA).* The TSP shall include resolution of all outstanding REAs under the contract, in accordance with FAR Part 49 and FAR 52.249-2 ALT I. This includes all costs associated with the suspension of the above referenced contract, if any.

(8) *Audit.* TSPs (including those from subcontractors) with a total cost of \$2,000,000 or higher must be accompanied by a Certificate of Current Cost or Pricing Data (see FAR 15.403-4) using the format prescribed at FAR 15.406-2 and will be subject to audit by the Defense Contract Audit Agency (DCAA) in accordance with FAR 49.107.

(9) *Contractor Workforce.* If this termination, together with other outstanding terminations, will necessitate a significant reduction in your workforce, you are urged to —

- a) Promptly inform the local State Employment Service of your reduction-in-force schedule in numbers and occupations, so that the Service can take timely action in assisting displaced workers;
- b) Give affected employees maximum practical advance notice of the employment reduction and inform them of the facilities and services available to them through the local State Employment Service offices;
- c) Advise affected employees to file applications with the State Employment Service to qualify for unemployment insurance, if necessary;
- d) Inform officials of local unions having agreements with you of the impending reduction-in-force; and
- e) Inform the local Chamber of Commerce and other appropriate organizations that are prepared to offer practical assistance in finding employment for displaced workers of the impending reduction-in-force.

(10) *Protection and Preservation of Property.* Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of any property related to this contract that is in the possession of

the Contractor and in which the Government has or may acquire an interest. Accordingly, you are directed as follows:

Task 1 – With regard to demobilization, undertake only those activities necessary to remove your equipment, personnel, and other contractor owned structures from the sites, including field office trailers for Government use. Sufficient personnel and equipment must be kept on site to complete required activities identified in the attached statement of work and all non-terminated work and activities identified in Task 2. The Task 2 activities shall be approved by the undersigned Contracting Officer.

Task 2 – Provide in writing (via email) to the undersigned Contracting Officer, **no later than 14 days from the date of this Notice**, a list of any other activities that the Contractor believes are necessary under FAR 52.249-2(b)(8), including the specific description, location, and quantity of those activities, and an explanation of why the specific activity is necessary to permanently make safe, protect or preserve property, categorized as follows:

- a) Cat 1: Life Safety conditions
- b) Cat 2: Property safety conditions
- c) Cat 3: Environmental impact conditions
- d) Cat 4: All other safety related site conditions or issues that the contractor feels must be identified to the Contracting Officer

No activities shall be undertaken under Task 2 unless prior written concurrence is received from the undersigned Contracting Officer. If you are unsure what category an activity falls into (i.e., Task 1 or 2), you should include such activities on the list pursuant to Task 2 to avoid potentially unallowable activities.

(11) *Property*. As directed or authorized by the undersigned Contracting Officer, you are required to use best efforts to sell or return to vendors fabricated or unfabricated panels and parts, work in progress, completed work, supplies, and other material produced or acquired for the work terminated; *provided*, however, that the Contractor —

- a) is not required to extend credit to any purchaser, and
- b) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the undersigned Contracting Officer. Accordingly, you are directed to provide in writing to the undersigned Contracting Officer, **no later than 21 days from the**

date of this Notice, a list of all property identified above, including a basic description, location, quantity, and estimated cost or credit to restock or dispose of the materials, for Contracting Officer approval prior to any Contractor transfer or disposition. Specifically identify those materials held off-site at Contractor owned/leased locations.

(12) *Inventory*. Submit a complete termination Inventory Disposal Schedule on SF1428 (encl 4) for all contractor acquired property, **no later than 120 days from the date of this Notice**. Group all items of the same property classification, submit separate schedules for scrap, and submit separate schedules for each property location identified in Block 11a of the SF1428.

(13) *Legal Proceedings*. Notify the undersigned Contracting Officer of all pending legal proceedings that are based on subcontracts or purchase orders under the contract, or in which a lien has been or may be placed against termination inventory to be reported to the Government on the SF1428 and SF1436. Also, promptly notify the undersigned Contracting Officer of any such proceedings that are filed after receipt of this Notice.

No other Government personnel can approve or change the terms of this termination. Any matter that you believe is not covered by this Notice of Partial Termination should be brought to my attention immediately via email to: CESWF-IIS@usace.army.mil.

Sincerely,

BRYANT.AMELIA
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Digitally signed by
BRYANT.AMELIA.KAI.11280
85650
Date: 2022.02.18 13:43:50
-06'00'

Amelia K. Bryant
Contracting Officer

4 Enclosures

1. Standard Form 1436
2. Adequacy Tool Checklist
3. Standard Form 1439
4. Standard Form 1428

cc (w/o enclosures):

Travelers Casualty and Surety Company
One Tower Square
Hartford, CT 06183

AND

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116

The undersigned consents to the reinstatement of the terminated contract IAW FAR 49.102(d) and acknowledges receipt of a signed copy of this Partial Notice of Termination on _____ (date). A signed copy of this Notice is returned to the Contracting Officer at: CESWF-IIS@usace.army.mil.

(Firm name)

(Principals Typed Name)

(Title)

(Principals Signature)



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U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

February 16, 2022

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(3) Furnish notice of termination to each immediate subcontractor and supplier that will be affected by this partial termination. In such notice —

- a) Specify your Government contract number W9126G19D0020, and task order number W9126G19F6154;
- b) State that the contract has been partially terminated;
- c) Provide instructions to stop all work, make no further shipments, place no further orders, and terminate all subcontracts under the contract for terminated portions of the contract;
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Sincerely,

BRYANT.AMELI
A.KAI.1128085
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Digitally signed by
BRYANT.AMELIA.KAI.1128
085650
Date: 2022.02.16 12:45:00
-06'00'

Amelia K. Bryant
Contracting Officer

4 Enclosures

1. Standard Form 1436
2. Adequacy Tool Checklist
3. Standard Form 1439
4. Standard Form 1428

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116

The undersigned consents to the reinstatement of the terminated contract IAW FAR 49.102(d) and acknowledges receipt of a signed copy of this Partial Notice of Termination on _____ (date). A signed copy of this Notice is returned to the Contracting Officer at: CESWF-IIS@usace.army.mil.

(Firm name)

(Principals Typed Name)

(Title)

(Principals Signature)